STATE OF MICHIGAN

COURT OF APPEALS

DAVID WILLIAMS,

Plaintiff-Appellant,

v

ARBOR HOME, INC. and MICHIGAN ELEVATOR COMPANY,

Defendants-Appellees.

FOR PUBLICATION
December 17, 2002
9:10 a.m.

No. 225693
Wayne Circuit Court
LC No. 99-913425-NO

Updated Copy
February 14, 2003

Before: Whitbeck, C.J., and O'Connell and Meter, JJ.

METER, J.

Plaintiff appeals as of right from an order of dismissal and a subsequent order denying his motion for relief from the order of dismissal. We dismiss plaintiff's appeal for lack of jurisdiction.

After plaintiff refused to provide discovery and then disappeared, the court entered an order stating that the case would be dismissed unless plaintiff was produced for a deposition within thirty days. Plaintiff did not appear within this period, and the trial court entered an order dismissing the case with prejudice on December 21, 1999. The court later denied plaintiff's motion for relief from that order.

A party may take an appeal of right from a final order. MCR 7.203(A)(1). A final order in a civil action is the first order "that disposes of all the claims and adjudicates the rights and liabilities of all the parties, including such an order entered after reversal of an earlier final judgment or order."[1] MCR 7.202(7)(a)(i). Unless otherwise provided by law, an appeal of right must be taken within twenty-one days after entry of the judgment or order appealed from or within twenty-one days of an order denying a motion for postjudgment relief, if the motion was filed within the twenty-one day appeal period or "within further time the trial court may have allowed during that 21-day period." MCR 7.204(A)(1). These time limits are jurisdictional. MCR 7.204(A).

[1] There are exceptions to this definition for receivership and similar actions. See MCR 7.202(7)(a)(ii) and MCR 2.604(B).

Plaintiff filed his claim of appeal on March 3, 2000, more than twenty-one days after the December 21, 1999, order of dismissal. Plaintiff also filed his motion for postjudgment relief more than twenty-one days after December 21, 1999, and he did not receive an extension of time from the court to file the motion. Accordingly, if the December 21, 1999, order constituted a final order, then plaintiff forfeited his appeal of right.

Plaintiff contends that the December 21, 1999, order was *not* in fact a final order because it disposed only of the claims against Arbor Home, Inc. (AH), and not the claims against Michigan Elevator Company (MEC). Defendants, on the other hand, argue that the December 21, 1999, order was a final order because (1) it dismissed the claims against AH and (2) AH was the only true defendant in the case. Defendants contend that MEC was never validly added as a party because plaintiff did not seek leave of the court to file the amended complaint that purportedly added MEC as a party.

Because plaintiff attempted to add MEC as a party after AH filed a notice of nonparty fault under MCR 2.112(K)(3) and MCL 600.2957, our resolution of this case involves the application of MCR 2.112(K)(4) and MCL 600.2957(2), which govern the filing of an amended complaint against an identified nonparty. This Court reviews issues of statutory and court rule construction de novo. *Staff v Johnson*, 242 Mich App 521, 527; 619 NW2d 57 (2000). Moreover, "Jurisdiction is a question of law that this Court reviews de novo." *Bass v Combs*, 238 Mich App 16, 23; 604 NW2d 727 (1999).

MCR 2.112(K)(4) states:

> Amendment Adding Party. A party served with notice [of a nonparty's fault] under this subrule may file an amended pleading stating a claim or claims against the nonparty within 91 days of service of the first notice identifying that nonparty. The court may permit later amendment as provided in MCR 2.118.

MCL 600.2957(2) states, in relevant part, "Upon motion of a party within 91 days after identification of a nonparty, the court shall grant leave to the moving party to file and serve an amended pleading alleging 1 or more causes of action against that nonparty."

Plaintiff contends that the court rule and the statute are in conflict, with the court rule allowing an amended complaint to take effect without leave of the court and the statute allowing an amended complaint to take effect only with leave of the court. Plaintiff contends that because the conflict involves an issue of procedure, the court rule should prevail. See *Staff*, *supra* at 531. Defendants, on the other hand, contend that the court rule and the statute are *not* in conflict and that the statute merely includes more detail than the court rule. We agree with defendants.

As noted in *Staff*, *supra* at 530, "To determine whether there is a real conflict between a statute and a court rule, both are read according to their plain meaning." The court rule plainly allows a plaintiff to file an amended complaint adding a nonparty but *does not specifically mention* whether leave of the court is also required. The statute, on the other hand, states that leave of the court is indeed required. As argued by defendants, the statute therefore merely includes more detail than the court rule. Moreover, the court rule specifically refers to MCL 600.2957, see MCR 2.112(K)(1), and the statute is again specifically mentioned in the staff

comment to the 1997 amendment of MCR 2.112.[2] The staff comment to the 1997 amendment indicates that the court rule was essentially meant to implement the statute. Reading the court rule and the statute in conjunction, we conclude that leave of the court is indeed required before an amended pleading adding a nonparty becomes effective.

Because plaintiff did not seek leave of the court to add MEC as a party, MEC was never properly added to this lawsuit.[3] Accordingly, we conclude upon our review de novo that the December 21, 1999, order was indeed the final order in this case. Therefore, plaintiff forewent his appeal by right.

Plaintiff 's appeal is dismissed.

Whitbeck, C.J., concurred.

/s/ Patrick M. Meter
/s/ William C. Whitbeck

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[2] The 1997 amendment added MCR 2.112(K).

[3] We note that MEC made the argument below that it was never properly added as a party, but the trial court did not directly address the argument because it concluded that the dismissal of plaintiff's case for discovery violations applied to any and all parties to the lawsuit.